

DUI SEMINAR

December 14, 2015
APAAC Training Center
Phoenix, Arizona



MAXIMIZING DIRECT EXAMINATION

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Maximizing Direct Examination

Getting the Maximum Benefit From the Direct Examination of your Police Officer



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Get Prepared to Direct!



- Before you ever get to questioning your officer, you have to **BE PREPARED!**

Prepare Yourself

- ♦ How?
 - Read and re-read the police report
 - Check for additional reports, supplements, witness statements
 - Check for and obtain photos (may want booking photo or MVD color photo), 911 calls, videos, etc.
 - Pre-mark any evidence, disclose ahead of trial
 - If DUI Drugs, check PDR, consult w/ officer, DRE, toxicologist

Prepare Yourself, cont.

- Tell your officers, witnesses when you know case is set for trial
- Talk to your officer before trial! Direct examination should not be the first time you discuss the case!
- Anticipate defenses
 - Suppression motions
 - Notice of Defenses
 - Follow your gut
- Share anticipated defenses with Officer, Toxicologist, consult w/ fellow prosecutors
 - Not many novel defenses

Prepare Yourself, cont.

- Learn the location – Go to the scene, Google Maps, Google street view
- Prepare diagrams, maps if necessary, show officer
- Find out about the conditions on the DOV
 - weather
 - lighting
 - construction, lane closures, etc.



Make a Blueprint



- Write down goals, elements, important areas, foundational requirements, etc.
- Avoid writing down every question to ask officer
 - Officer may stray from your script
 - You will need to adjust script on-the-fly
 - You may be focusing on next question in script, not listening to officer
- Instead, highlight important areas, check off as completed

OK, You're Fully Prepared

- How do we effectively present our evidence?
 - Paint a picture, tell a story – neither the judge nor the jury know the facts (judge may know some)



How to Evoke the Story?

- We want your questions and the officer's testimony to be:
 - Simple
 - Logical (and likely chronological)
 - and Interesting, if not exciting
 - May be difficult, not all DUI's are very exciting

Introduction

- Your officer is on the stand, he/she is dressed appropriately. Let's get to know him/her!
- *Officer, please introduce yourself to the jury.*
- *Could you briefly explain your training and experience in becoming a police officer? How long have you been a police officer?*
- If brand new officer – still ask?

DUI or DRE Officer

- If your officer has specific training in detecting drivers under the influence of alcohol/drugs, such as HGN/SFST school, ARIDE, DRE certification, or is an instructor in those areas, have the officer explain their training and experience.
- If your officer was on DUI patrol or a DUI task force, don't hide that fact. Defense attorney: *You were out looking to arrest someone for DUI that night, correct?* That's the officer's job, and they succeeded!

Questions for Your Officer

- ♦ Ask some open-ended questions that allow your officer to tell a story in a clear, concise, logical and persuasive manner: *Tell the jury what you observed when you arrived on the scene.*
- ♦ Use indicators in your questions to guide the officer's answers:
 - *Let me direct you to the evening of March 3rd*
 - *Let's talk about the HGN test*
 - *Let me turn your attention to ...*

Questions, cont.

- ♦ Don't make questions TOO open-ended
- ♦ Don't be vague
 - Ex.: *What was the defendant doing?*
- ♦ Ask direct, specific questions
 - Ex.: *Did you see the defendant driving?*



Challenge the Officer

- For questions that might be in contention:
- *How can you be sure it was the defendant you saw driving?*
- *How can you tell that the defendant's tires drove outside of the lane line?*
- *Do you arrest everyone who merely has bloodshot eyes for DUI??*

Be a Good Listener



- Officer may stray from script
- Looks bad if you ask a question that was already answered
- If you're not listening to the officer, the jury may not listen

Avoid Professional Jargon

Be Conversational-help the witness tell the story in a natural, easy to understand, methodical and compelling manner



Avoid Jargon

Be Conversational

Effectuated an arrest

Arrested

Exited the vehicle


Got out of the car

Moderate sway

2-3" circular sway

POLICE JARGON

Avoid	Use
1. Activate	Turned on
2. Advised	Told
3. Altercation	Fight
4. Apprehended	Caught
5. Connected	Talked to
6. Exit ("He exited the Vehicle")	Got out of the car
7. Indicated	Said
8. Monitored	Listened
9. Numerous	Many
10. Perpetrator (Peep)	Thief, defendant, etc.
11. Prior to	Before
12. Responded to the scene	Went
13. Stated	Said




14. Subsequent

15. Vehicle

After

Car, Truck, Etc.

Use the English language
and use simple terms that are
easy to follow!!!



Anticipate and Preempt Defenses



- Anticipate and pre-empt your opponent's cross-examination
- Admit other causes for individual signs and symptoms –then emphasize totality of circumstances
- Admit mistakes in report if known
- Honesty is the best policy-everyone makes mistakes. Does officer's mistake lessen evidence of defendant's guilt?

Mistakes

- Inform the officer before trial is he/she makes a mistake while testifying to correct it as soon as possible-shows sincerity, enhances credibility



Field Sobriety Tests



FST's vs. SFST's

- ♦ Both are useful tools in determining impairment
- ♦ SFST's are standardized and systematic, used by police departments around the country
- ♦ Officer did not "make up" either the FST's or SFST's, been trained, pre-printed in report

HGN

- ♦ Lay the proper foundation
- ♦ Emphasize the officer's training and experience
- ♦ Don't relate the angle of onset to a BAC level
- ♦ Officer can testify in their opinion if defendant is above or below a .08% BAC

Other FST's

- ♦ Not looking for perfect performance-even sober people don't always perform flawlessly
- ♦ Arrest not based solely on FST performance
- ♦ Not a game of numbers, or how many times did someone get wrong, but a tool to help determine if a suspect is under the influence
- ♦ To demonstrate or not to demonstrate?

Chemical Tests



- **Breath Test Operator**
 - Highlight training and experience
 - Administered in accordance with training and rules
- **Maintenance Officer**
 - Frequently highly skilled technicians
 - Tested equipment on regular basis, followed protocols

Chemical Tests, cont.



- **Blood collection**
 - Officer observed blood draw
 - Drawn by qualified phlebotomist
 - Used standard police-issued blood alcohol collection kit for DUI's
 - Inverted tubes or watched tubes inverted
- **Urine**
 - Be aware if female suspect, male officer, visa-versa, who watched urine collection?

Evidence



- **Previously disclosed**
- **Show to defense attorney**
- **When showing to officer, make sure jury can see**
- **If publishing, wait until jury is done before asking your next question**
 - Jury may not listen to next question
 - May think evidence is not very important

Some Things to Avoid



- Mention of suppressed evidence
- Comment on defendant's rights
- Fuenning violations

Make sure officer is aware of these things before they testify!


What is Most Important Thing?



Sorry, Charlie!

The most important thing is seeing that Justice is done.

- Be honest
- Don't be abrasive (that's defense attorney's job)
- Control your reactions
- Be comfortable-find your style



Questions?

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